

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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| <p>DONNA HUNT, <i>on behalf of herself and all others similarly situated</i> ,</p> <p>Plaintiff,</p> <p>v.</p> <p>EQUITYEXPERTS.ORG, LLC</p> <p>Defendant.</p> | <p>Case No.</p> <p>CLASS ACTION COMPLAINT AND JURY DEMAND</p> |
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NATURE OF ACTION

1. Plaintiff Donna Hunt (“Plaintiff”) brings this putative class action against Defendant EquityExperts.org, LLC (“Defendant”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, individually and on behalf of all others similarly situated.

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

4. “In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016). Congress is

“well positioned to identify intangible harms that meet minimum Article III requirements,” thus “Congress may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.’” *Id.* (quoting *Lujan v. Defs of Wildlife*, 504 U.S. 555, 578 (1992)).

5. “Without the protections of the FDCPA, Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.’” *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467, at *3 (N.D. Ill. July 11, 2016) (quoting 15 U.S.C. § 1692(b)). Thus, a failure to honor a consumer’s right under the FDCPA constitutes an injury in fact for Article III standing. *See id.* at *3 (holding that a consumer “has alleged a sufficiently concrete injury because he alleges that [Defendant] denied him the right to information due to him under the FDCPA”); *see also Church v. Accretive Health, Inc.*, No. 15-15708, 2016 WL 3611543, at *3 (11th Cir. July 6, 2016) (holding that consumer’s § 1692g claim was sufficiently concrete to satisfy injury-in-fact requirement).

6. “The Supreme Court has held time and again that the violation of a statutory right to receive information one is entitled to receive creates a concrete injury sufficient to confer standing on a plaintiff.” *Zia v. CitiMortgage, Inc.*, 210 F. Supp. 3d 1334, 1343 (S.D. Fla. 2016).

7. “The FDCPA does create an informational right which did not exist prior to its enactment, and that right is tied to the harm which a consumer may suffer if not provided with that information. Consequently, the deprivation of that information is, in most cases, sufficient to confer Article III standing. That was the law before *Spokeo*, and

that law was not based on an erroneous understanding of Article III like the one corrected by *Spokeo*, but by application of well-settled principles of standing jurisprudence which *Spokeo* did not change (and, in fact, upon which *Spokeo* relied).” *Hagy v. Demers & Adams, LLC*, No. 2:11-CV-530, 2017 WL 1134408, at *4 (S.D. Ohio Mar. 27, 2017).

8. “[N]umerous other courts, including courts in this circuit and from around the country, have rejected *Spokeo*-based standing challenges in the context of FDCPA violations.” *Neeley v. Portfolio Recovery Assocs., LLC*, No. 115CV01283RLYMJD, 2017 WL 3311045, at *2 (S.D. Ind. Aug. 2, 2017) (citing *Pogorzelski v. Patenaude & Felix APC*, No. 16-C-1330, 2017 WL 2539782, at *4 (E.D. Wis. June 12, 2017)) (collecting cases).

9. “[E]ven though actual monetary harm is a sufficient condition to show concrete harm, it is *not* a necessary condition.” *Lane*, 2016 WL 3671467 at *4 (emphasis in original).

THE FAIR DEBT COLLECTION PRACTICES ACT

10. Congress enacted the FDCPA to “eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010) (citing 15 U.S.C. § 1692(e)).

11. To ensure that debt collectors give consumers adequate information on their legal rights, the FDCPA requires that a debt collector’s initial written communication with a consumer contain very specific disclosures. *See* 15 U.S.C. § 1692g(a).

12. “[T]he FDCPA is a broad remedial statute that imposes strict liability on debt collectors; its terms are to be applied ‘in a liberal manner.’” *Cordes v. Frederick J. Hanna & Associates, P.C.*, 789 F. Supp. 2d 1173, 1175 (D. Minn. 2011) (quoting *Owens v. Hellmuth & Johnson, PLLC*, 550 F. Supp. 2d 1060, 1063 (D. Minn. 2008)).

PARTIES

13. Plaintiff is a natural person who at all relevant times resided in the State of Minnesota, County of Anoka, and City of Ramsey.

14. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

15. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

16. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

17. Plaintiff is a natural person allegedly obligated to pay a debt.

18. Plaintiff’s alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, homeowner association fees (the “Debt”).

19. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts.

20. Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

21. In connection with the collection of the Debt, Defendant sent Plaintiff a letter dated November 20, 2017.

22. A true and accurate copy of the November 20, 2017 letter is attached as Exhibit A.

23. Plaintiff received and read Defendant's November 20, 2017 letter.

24. The November 20, 2017 letter was Defendant's initial communication with Plaintiff with respect to the Debt.

25. The November 20, 2017 letter purported to contain the notices required in an initial communication by 15 U.S.C. § 1692g(a). *See* Exhibit A.

26. However, Defendant's November 20, 2017 letter states, in part:

If you notify us within the thirty-day period that you dispute the debt, or any part of the debt, we will obtain verification of the debt or a copy of the judgment against you, if any, and mail a copy of the verification and/or judgment to you.

Exhibit A (emphasis in original).

27. Defendant fails to state that notification of a dispute must be in writing in order to require Defendant to obtain and send verification of the Debt to Plaintiff. *See* 15 U.S.C. § 1692g(a)(4).

CLASS ACTION ALLEGATIONS

28. Plaintiff repeats and re-alleges all factual allegations above.

29. Defendant's November 20, 2017 letter is based on a form or template used by Defendant to send collection letters (the "Template").

30. The Template fails to meaningfully convey that a dispute of the debt, or any portion thereof, must be made in writing in order to obtain and send verification of the alleged debt, in the same manner as Defendant did with Plaintiff above.

31. Defendant has used the Template to send collection letters to over 40 individuals in the State of Minnesota within the year prior to the filing of the original complaint in this matter.

32. Plaintiff brings this action on behalf of herself and all others similarly situated. Specifically, Plaintiff seeks to represent the following class of individuals:

All persons with a Minnesota address, to whom Defendant sent a letter based upon the Template, within one year before the date of this complaint, in connection with the collection of a consumer debt.

33. The proposed class specifically excludes the United States of America, the State of Minnesota, counsel for the parties, the presiding United States District Court Judge, the Judges of the United States Court of Appeals for the Eighth Circuit, and the Justices of the United States Supreme Court, all officers and agents of Defendant, and all persons related to within the third degree of consanguinity or affection to any of the foregoing persons.

34. The class is averred to be so numerous that joinder of members is impracticable.

35. The exact number of class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery.

36. The class is ascertainable in that the names and addresses of all class members can be identified in business records maintained by Defendant.

37. There exists a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. These common questions of law and fact predominate over questions that may affect individual class members. Such issues include, but are not limited to: (a) the existence of Defendant's identical conduct particular to the matters at issue; (b) Defendant's violations of the FDCPA; (c) the availability of statutory penalties; and (d) attorneys' fees and costs.

38. Plaintiff's claims are typical of those of the class she seeks to represent.

39. The claims of Plaintiff and of the class originate from the same conduct, practice, and procedure on the part of Defendant. Thus, if brought and prosecuted individually, the claims of the members of the class would require proof of the same material and substantive facts.

40. Plaintiff possesses the same interests and has suffered the same injuries as each class member. Plaintiff asserts identical claims and seeks identical relief on behalf of the unnamed class members.

41. Plaintiff will fairly and adequately protect the interests of the class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

42. Plaintiff is willing and prepared to serve this Court and the proposed class.

43. The interests of Plaintiff are co-extensive with and not antagonistic to those of the absent class members.

44. Plaintiff has retained the services of counsel who are experienced in consumer protection claims, as well as complex class action litigation, will adequately

prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent class members.

45. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and 23(b)(1)(B). The prosecution of separate actions by individual members of the class would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action or could substantially impair or impede their ability to protect their interests.

46. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the parties opposing the classes. Such incompatible standards of conduct and varying adjudications, on what would necessarily be the same essential facts, proof and legal theories, would also create and allow the existence of inconsistent and incompatible rights within the class.

47. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that Defendant has acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

48. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the questions of law and fact that are common to members of the class predominate over any questions affecting only individual members.

49. Moreover, a class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint in that: (a) individual

claims by the class members will be impracticable as the costs of pursuit would far exceed what any one plaintiff or class member has at stake; (b) as a result, very little litigation has commenced over the controversies alleged in this Complaint and individual members are unlikely to have an interest in prosecuting and controlling separate individual actions; and (c) the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy.

COUNT I
VIOLATION OF 15 U.S.C. § 1692g(a)(4)

50. Plaintiff repeats and re-alleges each factual allegation above.

51. A key provision of the FDCPA is § 1692g, which requires a debt collector to send, within five days of its initial communication with a consumer, a written notice which provides information regarding the debt and informs the consumer of his or her right to dispute the validity of the debt, and/or request the name and address of the original creditor, within 30 days of receipt of the notice. *See* 15 U.S.C. § 1692g(a).

52. Congress adopted “the debt validation provisions of section 1692g” to guarantee that consumers would receive “adequate notice” of their rights under the FDCPA. *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (citing *Miller v. Payco–General Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991)).

53. This validation requirement is a “significant feature” of the law that aimed to “eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.” *See Hernandez v.*

Williams, Zinman & Parham PC, 829 F.3d 1068, 1070 (9th Cir. 2016) (citing S. Rep. No. 95-382, at 4 (1977)).

54. With respect to § 1692g(a)(4), “[t]he statute is clear. The debt collector ‘shall’ notify the consumer of her right to dispute the debt in writing.” *Bishop v. Ross Earle & Bonan, P.A.*, 817 F.3d 1268, 1274 (11th Cir. 2016); *see also Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282, 286 (2d Cir. 2013) (“[C]onsumers [must] take the extra step of putting a dispute in writing before claiming the more burdensome set of rights defined in § 1692g(a)(4), (a)(5) and (b).”); *Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078, 1081 (9th Cir. 2005) (explaining that a consumer can trigger the right to verification “only through written dispute”).

55. “Every district court to consider the issue has held that a debt collector violates § 1692g(a) by failing to inform consumers that requests under subsections (a)(4) and (a)(5) must be made in writing.” *Osborn v. Ekpsz, LLC*, 821 F. Supp. 2d 859, 870 (S.D. Tex. 2011).

56. Defendant violated 15 U.S.C. § 1692g(a)(4) by failing to meaningfully convey to Plaintiff that a dispute of the debt, or any portion thereof, must be made in writing in order to obtain verification of the alleged debt or a copy of a judgment against Plaintiff.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;

- b) Adjudging that Defendant violated 15 U.S.C. § 1692g(a)(4) with respect to Plaintiff and the class she seeks to represent;
- c) Awarding Plaintiff and the class she seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the class she seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the class she seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

TRIAL BY JURY

57. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: January 30, 2018

Respectfully submitted,

/s/JD Haas

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